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Datasheet for the decision of 25 July 2018

Case Number: T 2543/12 - 3.5.06

Application Number: 01202210.9

Publication Number: 1331556

IPC: G06F9/44

Language of the proceedings: EN

Title of invention:
Server-based computer environment

Patent Proprietor:
Real Enterprise Solutions Development B.V.

Opponent:
AppSense Limited

Headword:
Application integration/REAL ENTERPRISE SOLUTIONS DEVELOPMENT

Relevant legal provisions:
EPC Art. 100(c)

Keyword:
Grounds for opposition - subject-matter extends beyond content of earlier application (no)
Remittal to the department of first instance

Decisions cited:

Catchword:

Europäisches Patentamt
European Patent Office
Office européen des brevets

Beschwerdekammern

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Case Number: T 2543/12 - 3.5.06

D E C I S I O N
of Technical Board of Appeal 3.5.06
of 25 July 2018

Appellant: (Patent Proprietor)	Real Enterprise Solutions Development B.V. Het Zuiderkruis 33 5215 MV 's-Hertogenbosch (NL)
Representative:	De Vries & Metman Overschiestraat 180 1062 XK Amsterdam (NL)
Respondent: (Opponent)	AppSense Limited 3200 Daresbury Park Daresbury Warrington Cheshire WA4 4BU (GB)
Representative:	Gill Jennings & Every LLP The Broadgate Tower 20 Primrose Street London EC2A 2ES (GB)
Decision under appeal:	**Decision of the Opposition Division of the European Patent Office posted on 15 November 2012 revoking European patent No. 1331556 pursuant to Article 101(3)(b) EPC.**

Composition of the Board:

Chairman	W. Sekretaruk
Members:	G. Zucka
	M. Müller

Summary of Facts and Submissions

I. The appeal is against the decision by the opposition division, dispatched with reasons on 15 November 2012, to revoke European patent EP 1 331 556, on the basis that the main request contained added subject-matter (Article 100(c) EPC), the auxiliary request not having been admitted in the procedure. The following documents were mentioned in the appealed decision:

D1 = WO 91 02 305 A1
D2 = US 5 909 545 B
D3 = US 5 613 090 B
D4 = O'Reilly, Tim *et al.*, "X Window System User's Guide", United States: O'Reilly and Associates, Inc., 1993, Ed. Motif, ISBN: 1-56592-015-5 (pages 64 to 68)
E1 = WO 99 163 430 A1
E2 = US 5 874 960 B
E3 = US 6 029 191 B
E4 = WO 95 35 535 A1

II. A notice of appeal was received on 11 December 2012, the appeal fee being paid on the same day. A statement of grounds of appeal was received on 15 March 2013.

III. It is the board's understanding that the appellant (proprietor) requested that the decision under appeal be set aside and the patent be maintained on the basis of corrected version no 1 of the patent as granted, EP 1 331 556 B9, or on the basis of claim 1 of one of auxiliary requests 1 to 7 filed with the grounds of appeal, with other independent claims to be submitted when claim 1 of one of the auxiliary requests was considered allowable. The appellant made a conditional request for oral proceedings.

IV. The respondent (opponent) made no requests.

V. The board issued a summons to oral proceedings. In an annex to the summons, the board set out its preliminary opinion on the appeal.

VI. On 25 June 2018, the appellant filed claims for six new auxiliary requests, replacing the existing auxiliary requests. The claim sets for all requests are now complete, claim 1 of auxiliary requests 1 to 3 being the same as that of the respective previous auxiliary requests 1 to 3. Auxiliary requests 4 to 6 are new.

The further text on file for the auxiliary requests consists of description columns 1 to 8 and drawing pages 11 to 13 of corrected version no 1 of the patent as granted.

VII. During the oral proceedings, the respondent declared to have the same requests as the appellant and made no substantive submissions.

VIII. Claim 1 of the appellant's main request reads as follows:

"A server-based computing system comprising at least one server (1) comprising means for running an application and at least one client computer (5) comprising means (6) for locally running at least one further application, the client computer (5) and the server (1) being connected through a network (2), wherein the server (1) comprises:

- means for providing the client computer with a user interface comprising a central screen (10)

having means (13, 14, 15) for initiating the application and the further application;
- means for providing a command to the client computer (5) over the network (2) to launch the further application after initiation of the further application, and

wherein the client computer (5) comprises:

- an input device (8) for providing input to the application and the further application;
- a display device for presenting output from the application and the further application, and
- means for launching the further application in response to receiving the command from the server (1) over the network (2),
- means for generating a local screen (9), said local screen being capable of comprising a window (19) for the further application generated in response to launching the further application;
- means for receiving the user interface comprising the central screen from the server; and
- means for merging the local screen (9) and the central screen (10) to display a merged screen (16) on the display device, such that the further application is fully integrated into the user interface received from the server (1)."

IX. Claim 7 of the appellant's main request has method features corresponding to the apparatus features of claim 1.

X. Claims 13 and 14 of the appellant's main request relate to computer programs implementing respectively the server and the client side of the system according to claim 1.

XI. The wording of the claims of the appellant's auxiliary requests is immaterial for the present decision.

XII. At the end of the oral proceedings, the chairman announced the board's decision.

Reasons for the Decision

1. *The admissibility of the appeal*

The appeal is admissible.

2. *The invention*

The invention relates to a system with a server and a client computer. The server provides the client with a user interface. The client has means for providing input to an application, as well as a display for presenting output from the application through the user interface. One application runs on the server, while the client can locally run a further application.

In order to provide a user interface that is easy to use and manage, the system comprises means to control the locally run application through the user interface provided by the server, and the local screen for the further application is merged with the central screen provided by the server, so that the further application is fully integrated into the user interface received from the server.

In addition, the server adds to the central taskbar on the local screen a button for the local application running on the client (see page 9, lines 10-14, and page 11, lines 25-30, of the description, figures 2C and 2D, and step 29 in figure 3), so that the user will not notice any difference between remote and local applications.

3. *Main request - Article 100(b) EPC 1973 - sufficiency of disclosure*

3.1 The opponent had argued (notice of opposition, section 4) that the patent does not disclose the subject matter of the invention in a manner sufficiently clear and complete for it to be carried out by a person skilled in the art, in particular (*ibid.*, sections 4.2 and 4.3) because the description does not disclose how the interface management program (which is being run on the server), mentioned on the originally filed description page 10, line 34 to page 11, line 21, becomes aware that an application has been started on the client computer.

3.2 According to the appealed decision (Reasons 14.3), the required information for implementing the claimed subject-matter was readily available at the filing date. The skilled person would therefore have no difficulty with such implementation, and the opposed patent consequently does meet the requirement of sufficiency of disclosure.

3.3 Neither party challenged the opinion of the opposition division, and the board has no occasion to deviate from that opinion.

4. *Main request - Article 100(c) EPC 1973 - added subject matter*

The opponent had argued (notice of opposition, section 5) that the replacement, in claim 1 of the patent as granted, of the expression "means for merging the local screen and the central screen to display a merged screen on the display device" by "means for merging the local screen (9) and the central screen (10) to display a merged screen (16) on the display device, such that the further application is fully integrated into the user interface received from the server (1)", without including the features relating to the addition of a button for the local application to the central task bar, constituted an unallowable intermediate generalisation.

4.1 The opponent's viewpoint had been followed in the appealed decision (see Reasons 10.3 and 10.5). The decision essentially states that the wording "fully integrated" only occurs in the description passage relating to the embodiment of figure 3, and therefore in particular steps 28 and 29 of the flow chart of that figure, which are necessary to ensure "full integration" in the sense of the original application's disclosure, should also have been included in the claim. More specifically, the opposition division found that "full integration" would not be achieved unless the server added to the central taskbar a button for the local application running on the client (step 29), because otherwise the user would notice a difference between remote and local applications.

4.2 The proprietor submitted (see grounds of appeal, section 3.1), as it had before the opposition division (see the decision, Reasons 10.5, b), that it is clear

from the application as a whole that "full integration" only implies that the user does not notice any difference regarding where the application is running; such integration does not require the presence of buttons.

4.3 The board does not agree with the viewpoint of the appealed decision mentioned under 4.1 above. Instead, it holds the following: The original expression in claim 1, retained in amended claim 1, indicates the intended result of merging the local screen and the central screen. Such merging will obviously result in some form of integration, which may be called "full", depending on what one expects to achieve. The board therefore considers that the statement of purpose requiring "full integration" is so broad and imprecise as not to limit the scope of the claim. Therefore, with the insertion of the statement of purpose into claim 1 no subject-matter has been added.

This had been the preliminary opinion of the board (see the summons, point 5.3) and neither party challenged it.

4.4 The board therefore concludes that the main request contains no added subject-matter.

5. *Main request - Article 100(a) EPC 1973 - novelty*

5.1 The opponent had argued (notice of opposition, section 6) that document E1 discloses the subject-matter of claims 1 and 7 of the patent as granted, the subject-matter of which would consequently not be novel; Article 54 EPC 1973.

5.2 According to the appealed decision however (Reasons 15.4.b and 15.4.c), the subject-matter of claim 1 differs from the disclosure of E1 in several aspects.

Neither party challenged this point of view, and the board has no occasion to deviate from the opinion of the opposition division.

5.3 The board therefore concludes that the subject-matter of claims 1 and 7 of the main request is novel.

6. *Main request - Article 100(a) EPC 1973 - inventive step and exclusion from patentability*

6.1 The opponent had argued (notice of opposition, section 7) that if one accepts for the sake of argument that a difference exists between the subject-matter of claim 1 and the disclosure of E1, *viz.* that there are "means for providing a command to the client computer (5) over the network (2) to launch the further application after initiation of the further application" and "means for launching the further application in response to receiving the command from the server (1) over the network (2)", this solves the technical problem of allowing the client application to be launched remotely. The opponent then argued (*ibid.*) that the solution is in fact found in E1 itself, but also in common general knowledge or in D1, D2, D3, D4, E2, E3 or E4. The subject-matter of claim 1 would therefore not be inventive; Article 56 EPC 1973.

6.2 The opponent further had argued (*ibid.*, section 8) that the feature of claim 1 of the patent as granted which according to the examining division was the feature "distinguishing the application over the prior art",

i.e. the merging of the two screens (see minutes of the oral proceedings before the examining division, point 7), relates to how the software of the client computer presents application-related information to the user, *i.e.* it is directed to either a computer program or to a presentation of information, both of which are excluded from patentability under Article 52(2) EPC 1973.

6.3 The opposition division had argued in its summons (section 9) that the subject-matter of independent claims 1 and 7 is not inventive in view of E1 and common general knowledge. In the appealed decision, however (see Reasons 13), the division explicitly chose not to give an opinion on inventive step.

6.4 The proprietor submitted among others (see grounds of appeal, section 3.5) that E1 already contains an alternative solution for the objective technical problem, and there is therefore no incentive for the skilled person to use the solution of claim 1. The claimed subject-matter should consequently be considered inventive.

6.5 The proprietor (grounds of appeal, section 3.3) argued that the subject-matter of the independent claims of the opposed patent is not excluded from patentability under Article 52(2) EPC 1973.

The appealed decision (Reasons 16.2) had argued the same for the independent claims 1 and 7.

6.6 Both parties and the board agree with the appealed decision that the subject-matter of independent claims 1 and 7 is not excluded from patentability.

With regard to independent claims 13 and 14, the argumentation in the grounds of appeal (in section 3.3) was limited to the statement that the decision considers these claims patentable. The board observed in its summons that this is not correct, as the decision only concluded (in Reasons 16.3) that the patentability of said claims was *immaterial*.

6.7 In his reply to the summons (page 4, second paragraph), the appellant argued that, contrary to what was stated in the board's summons (point 7.7), the X Window System (disclosed for instance in D4) cannot be used as closest prior art, because it does not foresee the possibility of a user of the client computer initiating a local application on the client computer via a user interface provided by the server. Instead, an inventive step analysis should start from E1. He further argued that the following distinguishing features should be considered technical and contribute to the inventive step of claim 1:

(e) means for providing the client computer with a user interface comprising a central screen (10) having means (13, 14, 15) for initiating the application and the further application;
(f) means for providing a command to the client computer (5) over the network (2) to launch the further application after initiation of the further application, and
(i) the client computer (5) comprising means for launching the further application in response to receiving the command from the server (1) over the network (2).

6.8 The board agrees with the appellant that the X Window System (as in D4) is not a suitable starting point for

an inventive step analysis. Indeed, although D4 does disclose the possibility of a "client" with a user interface showing applications running on a "server" (using the --display option; see page 65), the document is silent about the local applications which run on the client, let alone that it would disclose that they may run on the user interface provided by the server. It would at any rate appear not trivial for the skilled person to integrate local applications in the xterm terminal window of D4. The preliminary opinion formulated under point 7.7 of the board's summons is therefore not maintained.

6.9 Given that the respondent has the same requests as the appellant, he has chosen not to provide any additional arguments supporting the opposition ground mentioned under Article 100(a) EPC 1973 during the oral proceedings.

6.10 The board is of the opinion that it is primarily up to the parties to support their case during opposition or opposition appeal proceedings. The board notes that the matter of inventive step was not considered in the appealed decision, and that the proprietor has successfully challenged the board's preliminary opinion on the matter. Hence, the board finds it appropriate to exercise its discretion under Article 111(1) EPC and remit the case to the first instance for further prosecution.

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.

2. The case is remitted to the opposition division for further prosecution.

The Registrar: The Chairman:

I. Aperribay W. Sekretaruk

Decision electronically authenticated